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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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In the Matter of )  
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Market Entry and Regulation of )  
Foreign-affiliated Entities )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
IB Docket No. 95-22  
RM-8355  
RM-8392

**COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND  
TRANSPORTATION OF MEXICO**

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## TABLE OF CONTENTS

	SUMMARY .....	i
I.	INTRODUCTION .....	1
II.	MEXICO'S POLICIES ARE CONSISTENT WITH THE FCC'S STATED GOALS IN THIS PROCEEDING .....	5
A.	Mexico Is Committed To Opening Its Communications Markets To Full And Effective Competition .....	5
B.	Mexico Is Committed To A Regulatory Framework That Will Prevent Anti-Competitive Conduct In The Provision Of International And Domestic Telecommunications Services.....	9
III.	THE PROPOSED EFFECTIVE MARKET ACCESS POLICY IS UNILATERAL IN APPROACH AND INVITES RETALIATION BY OTHER GOVERNMENTS AGAINST U.S. CARRIERS .....	11
IV.	THE PROPOSED EFFECTIVE MARKET ACCESS POLICY DISCRIMINATES IN FAVOR OF U.S. FIRMS AND IGNORES THE REGULATORY CONCERNS OF OTHER COUNTRIES.....	14
V.	THE COMMISSION SHOULD NOT CODIFY ITS MANDATORY PROPORTIONAL RETURN POLICY.....	16
VI.	CONCLUSION .....	17

## **SUMMARY**

The Secretary of Communications and Transportation ("SCT"), a Cabinet-level minister within the Mexican administration, has jurisdiction over the development and implementation of telecommunications policies and regulations in Mexico. This responsibility is assigned primarily to the Undersecretary of Communications and Technological Development. As part of its responsibilities, SCT is charged with defining the terms under which foreign-affiliated entities may offer both domestic telecommunications services within Mexico and international services to or from Mexico.

The Mexican telecommunications market is undergoing rapid and fundamental change, transitioning from an historically government-owned monopoly to a privatized and fully liberalized market. Mexico expects to adopt a new telecommunications law within the next few months that will establish the country's telecommunications policies as among the most progressive in the world. The government will not restrict the number of competitors for local, long distance, or international services. Moreover, new regulations will require non-discriminatory interconnection of all networks and equal access for long distance and international services. This new regulatory framework (to the extent required to ensure the establishment and growth of competition) will be administered by an expert independent federal commission.

In light of these developments, SCT concludes that the “effective market access” proposal set forth in the NPRM would be a step backward for the Commission because:

1. It would not eliminate any of the uncertainty that may exist regarding the grant of Section 214 authorizations to foreign entities;
2. It could distort competition in Mexico’s domestic telecommunications market by providing affiliates of existing U.S. telecommunications service providers opportunities to leverage their U.S. market positions in ways not available to Mexican firms without U.S. affiliates;
3. It is premised on a unilateral imposition of U.S. regulatory policy on foreign administrations, rather than a model of cooperation and joint economic development that better suits, for example, existing U.S. - Mexican relations.

The Commission should not codify its “proportional return” policy. The implications of such a move cannot be fully anticipated in a rapidly evolving environment where multiple carriers will be competing on each side of the border. SCT urges the Commission to further study the issue, perhaps assessing more forward-looking alternatives to its existing policy.

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**COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND  
TRANSPORTATION OF MEXICO**

The Secretary of Communications and Transportation of the United States of Mexico ("SCT"), acting through its Undersecretary of Communications and Technological Development, hereby submits its comments on certain issues raised by the "Notice of Proposed Rulemaking" ("NPRM") released February 17, 1995 in the above-captioned proceeding. These comments provide only a summary of SCT's position on the proposed regulatory model for overseeing the United States international telecommunications market. SCT is restricting its comments to the proposed "market access test" only as it would apply to the 214 application process. As described in more detail below, there are several significant developments currently underway in Mexico that will have a dramatic effect on its telecommunications industry, and provide a basis for more comprehensive reply comments.

**I. Introduction**

The Secretary of Communications and Transportation, a Cabinet-level minister of the Mexican administration, has jurisdiction over the development and implementation of telecommunications policies and regulations in Mexico. Within the ministry, this

responsibility is assigned primarily to the Undersecretary of Communications and Technological Development. The telecommunications regulatory staff of the ministry, under the direction of the Undersecretary, conducts day-to-day regulation of both domestic and international telecommunications markets and service providers. SCT is also charged with defining the terms and conditions under which foreign-affiliated entities may offer both domestic telecommunications services within Mexico and international services to or from Mexico. At this time no independent telecommunications regulatory body comparable to the Federal Communications Commission ("FCC" or "Commission") has been established under Mexican law.

The economies of Mexico and the United States are deeply and increasingly interrelated. Telecommunications services are no exception. In fact, the development of advanced and efficient communications systems and services serving the two countries is a fundamental requirement for the continuation and growth of trade between the United States and Mexico. As the adoption of NAFTA symbolizes, it is the basic policy of both countries to strengthen and encourage further joint economic development. In fact, the policies of both SCT and the Commission regarding the provision of international telecommunications services between the two countries can affect the strategic economic objectives of each country.

Mexico already has begun the transition of its telecommunications industry from a government-owned and operated monopoly in almost all markets to a fully privatized, open and competitive industry, as explained in greater detail in Section II below. This transition began with the privatization of Teléfonos de Mexico ("Telmex") in 1990 and

will culminate in the opening of the local, long distance, and international services markets to competition in 1997. Many United States firms, including telecommunications service providers, have indicated a strong desire to enter the Mexican telecommunications market when competition is authorized. Similarly, Mexican firms (including authorized telecommunications service providers) have expressed to SCT an interest in participating in the United States telecommunications market.

It is SCT's view that it is in the interests of both Mexico and the United States that the telecommunications policies of each country be developed in manner that is cooperative, that recognizes the legitimate policy concerns of each government based upon the economic realities of each country, and that is premised on equal treatment and mutual respect. Neither country's policy should be structured as the unilateral imposition of political requirements on the other, or the erection of barriers to market entry, the removal of which is necessarily conditioned upon the acceptance by one country of the political and regulatory policies of the other. Unfortunately, this is the dominant tone of the NPRM's "effective market access" proposal. Despite the NPRM's recognition of the decreasing importance of the "traditional correspondent services model,"<sup>1</sup> the fundamental structure of the NPRM proposal appears to be premised on an assumption of a government-protected monopoly carrier in the potential foreign entrant's home market.<sup>2</sup> The Commission concedes that "the need for such entry standards will diminish" as liberalization and privatization of telecommunications markets continues around the

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<sup>1</sup> NPRM at para. 23.

<sup>2</sup> See, e.g., Id. at para. 29.

world.<sup>3</sup> The Commission also acknowledges that even if its proposal is adopted the resulting analysis will continue to be a case-by-case review of public interest issues in addition to market access questions.<sup>4</sup> As a consequence, adoption of the FCC proposal does not seem to ensure any greater certainty of outcome in the Section 214 application process.

Despite SCT's concern about the NPRM's lack of focus on cooperation and mutual policy development, SCT believes that its own telecommunications policy direction is essentially compatible with comparable United States policies, and in some instances more directly premised on economic principles of efficiency and competition. Therefore, even under the Commission's proposed effective market access standard, Mexico fully expects that its telecommunications service providers would be afforded full and fair access to the United States market.<sup>5</sup>

## **II. Mexico's Policies are Consistent With the FCC's Stated Goals in this Proceeding**

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<sup>3</sup> Id. at para. 34.

<sup>4</sup> Id. at paras. 40, 49.

<sup>5</sup> In the case of Telmex, it appears that United States law precludes its entry into the United States market due to the identity of one of its shareholders, even assuming that the Mexican market were fully open and that Telmex adopted and implemented fully cost justified, non-discriminatory equal access services available to all long distance carriers in Mexico. This U.S. policy, as discussed below, has the clear potential to affect the development of competition in the Mexican market. While this restriction results from a judicial decree, it nonetheless represents U.S. government policy and must be included in the Commission's evaluation of market entry restrictions.



The Commission states in the NPRM that its goals are to promote effective competition in the global market for telecommunications services, to prevent anti-competitive conduct in the provision of international services and facilities, and to encourage foreign governments to open their communications markets.<sup>6</sup> As summarized below, Mexico's telecommunications policy is fully consistent with these objectives.

The fundamental economic principles underlying SCT's policies for telecommunications regulation are to maximize, to the fullest possible extent possible, the efficient, transparent, and equitable competitive operation of all telecommunications markets, and to limit governmental intervention to the minimum required to establish and maintain such viable competition. In furtherance of these principles, in the short time since the current administration has taken office, SCT already has taken significant steps to transform the Mexican telecommunications industry, and anticipates taking further steps.

**A. Mexico Is Committed To Opening Its Communications Markets To Full And Effective Competition**

For decades public telecommunications services were provided in Mexico predominantly through organizations owned and operated by the federal government.<sup>7</sup> The two most prominent entities are Telmex, which provides local exchange and long

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<sup>6</sup> NPRM at para. 1.

<sup>7</sup> SCT has historically authorized the construction and operation of numerous private networks, both by government-owned and privately-owned enterprises. Like private networks in the United States, however, these networks were prohibited from providing public services.

distance and international services (both leased line and switched), and Telecomunicaciones de Mexico ("Telecom"), which provides telex, telegraph, and money order services, and operates the Morelos and Solidaridad domestic satellite systems of Mexico.

The privatization of Telmex in 1990 signaled the beginning of SCT's program to significantly change the market structure of Mexico's telecommunications industry. In accord with economic principles being applied throughout various important segments of Mexico's economy at the time, the government sold its equity interest in Telmex to private investors.<sup>8</sup> In the 1990 Modification to the 1976 Concession<sup>9</sup> of Telmex, numerous rights and obligations of Telmex and SCT were established, including such matters as the form of regulation of Telmex prices,<sup>10</sup> expansion and modernization of the public network,<sup>11</sup> and rate rebalancing requirements.<sup>12</sup> In addition, the Concession

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<sup>8</sup> These investors include SBC, formerly Southwestern Bell Corp., a United States corporation.

<sup>9</sup> Under Mexican law a "concession" is the vehicle by which the government transfers to a non-government entity the right to conduct a public service which has theretofore been viewed as a proper function of government. A concession contains terms and conditions binding on both the government and the grantee. In the case of Telmex, the concession serves the functions of both certification under Section 214 and radio licensing under Title III of the U.S. Communications Act of 1934.

<sup>10</sup> The Concession implemented a price-cap form of regulation of Telmex services.

<sup>11</sup> For example, Telmex was required to increase the number of basic service lines by at least 12 percent per year for four years, and to provide service to all towns of at least 5,000 population by the end of 1994.

<sup>12</sup> As in the United States when competition was first introduced in long distance services, the long distance and international services of Telmex in 1990 were priced significantly above costs in order to support the provision of local services at rates less than cost. The Concession established a program for gradual removal of these subsidies timed to coincide with the planned introduction of competition.

explicitly provided that Telmex would retain its monopoly in long distance and international services only until the end of 1996, and only in the event that it complied with the other requirements of the Concession. The Concession never explicitly granted Telmex a monopoly in local services. Finally, the Concession obligated Telmex to propose a plan for implementation of Equal Access<sup>13</sup> in 1994 and authorized SCT to prescribe a plan if parties objected to the proposal.

In 1994 SCT, considering the concerns of numerous interested parties regarding the Equal Access plan proposed by Telmex, issued general regulations defining the requirements of such a plan. SCT's equal access requirements differed in several material respects from the Telmex proposal. One of the most significant differences required the implementation of interconnection at every end office of Telmex (instead of the 10 tandem connection points proposed by Telmex) by no later than the year 2000. This plan is consistent with the implementation of completely digital end office switching centers planned by Telmex by that time.<sup>14</sup>

For the past several years, and particularly since the commencement of the current administration, SCT's primary focus in the telecommunications policy area has been the development of a comprehensive and detailed plan to ensure the timely implementation of

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<sup>13</sup> As used here, "Equal Access" refers to the implementation of local service interconnection that enables the end user to specify and utilize the long distance carrier of its choice without the need to dial extra digits or otherwise encounter discriminatory conditions.

<sup>14</sup> In addition, SCT has granted two cellular concessions in each of seven cellular regions to numerous private firms. During the past decade SCT has also granted numerous authorizations for the private and competitive provision of value added services.

competition in the local, long distance, and international telecommunications service markets. As a result of these efforts, a number of legislative changes were identified as required to implement the fundamental economic principles described above. A legislative proposal has been submitted to the Mexican Congress after detailed review by a Special Committee composed of representatives of all affected ministries of the government. SCT expects the legislation to be formally approved by the Mexican Congress within the next several months.

Among other significant provisions, SCT expects that this legislation will:

1. Open all significant telecommunications markets, including local, long distance, and international services to competition. The number of competitors will be determined by market forces rather than government market allocation or regulatory entry barriers.
2. Require all local carriers, including new entrants and wireless service providers, to provide non-discriminatory interconnection to other networks.
3. Require the imputation of interconnection charges by dominant carriers providing services utilizing their own access facilities.
4. Establish regulatory requirements to govern the pricing of all services by carriers with substantial market power.
5. Establish a process to make radio spectrum available for use by innovative services and new service providers.
6. Authorize the privatization of the domestic satellite systems of Mexico.
7. Establish authorization procedures to allow the transmission of satellite signals (such as video programming) into the territory of Mexico by domestic satellite systems licensed by other countries.
8. Deregulate telecommunications services to the maximum extent feasible consistent with strengthening competition in the relevant market.

The new Telecommunications Law will authorize the development of a detailed regulatory framework to ensure the successful implementation of its guiding economic principles. SCT already has commenced a number steps to develop this regulatory framework.

**B. Mexico Is Committed To A Regulatory Framework That Will Prevent Anti-Competitive Conduct In The Provision Of International And Domestic Telecommunications Services**

In addition to the provisions summarized above, the new Telecommunications Law of Mexico is expected to establish an independent Federal Telecommunications Commission ("FTC") to oversee the industry. The FTC will be removed from the control of the executive arm of Government and modeled on other existing independent commissions such as the Mexican Federal Competition Commission. SCT, as part of the executive arm of government, will remain responsible for identifying and administering the portion of the radio spectrum that will be required for governmental use, as well as making recommendations to the FTC regarding policy and other regulatory decisions.<sup>15</sup>

The Telecommunications Law will provide that the FTC will commence operations on a date certain after the effective date of the Law. During that time SCT will develop detailed regulations which shall be enforced by SCT until the FTC assumes jurisdiction. While the precise contents of these regulations are still under consideration,

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<sup>15</sup> In this regard the SCT's role will change substantially upon the commencement of FTC operations, more closely resembling the functions of the National Telecommunications Information Administration within the United States Executive branch. The primary purpose of this structural change is to establish an expert body that is technically knowledgeable regarding telecommunications issues and that is removed from partisan considerations.

the following agreed-upon principles illustrate the regulatory model which is taking shape in Mexico:

1. Because nondiscriminatory and reasonably priced interconnection of networks is a fundamental requirement for competitive markets, detailed regulations governing network interconnection (including technical specifications, cost determination and rate development) will be in place well in advance of the commencement of long distance competition in January of 1997.
2. Because competing parties have succeeded in using the regulatory process in several countries to delay the establishment of non-discriminatory interconnection, and because disputes regarding the proper level and structure of regulated rates have sometimes required decades of regulatory proceedings in some countries, the regulations will contain strict and mandatory dispute resolution procedures which will include strict time limits for decisions but be fair, efficient, and applicable to all industry participants.
3. The regulations will establish detailed procedures for the award of authorizations to utilize radio spectrum for new services such as Personal Communication Services. SCT anticipates that such spectrum will be made available under these procedures within the next several months.
4. The regulations will establish detailed cost and rate reporting mechanisms for carriers found to possess substantial market power.

Mexico has begun a complete renovation of its telecommunications regulatory structure and is proceeding to implement fully this new regulatory structure within the same schedule as that contemplated for the introduction of full competition. SCT believes that Mexico's resulting telecommunications industry structure will in several respects rely more directly on economic principles of efficiency and competition than do existing or proposed United States regulatory frameworks.<sup>16</sup> In summary, Mexico's

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<sup>16</sup> Other countries also have announced consideration of market entry policies that may be more liberal than the "regulated open entry policy" proposed by the FCC for 214 applications. For

telecommunications policy is quickly evolving into one of the most forward looking in the world, including the United States.<sup>17</sup> The transition from a monopolistic to a fully competitive industry is being pursued as quickly as possible, even under extremely difficult economic conditions within Mexico.

### **III. The Proposed Effective Market Access Policy is Unilateral In Approach and Invites Retaliation by Other Governments Against U.S. Carriers**

SCT believes that the effective market access policy proposed in the NPRM would be a step backward for the Commission. It would explicitly include a new criterion among those used by the Commission to potentially restrict entry to the United States market, but it would not increase the certainty of the Section 214 process. Numerous other general considerations would continue to apply to such applications, and still require a case-by-case analysis of each application. Such a policy also has the potential to create incentives for other countries to withhold access to their markets until it is clear that the United States will accept the "correctness" of a country's market

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example, Mr. Wolfgang Boetsch, German Minister of Posts and Telecommunications, has indicated that Germany is reviewing a plan to open markets without regard to country of origin. He stated that the Commission's proposal "leaves unanswered questions about determination of market openness and procedure." See, *Communications Daily*, April 4, 1995, at page 4.

<sup>17</sup> SCT does not believe that participation of United States firms in the Mexican market should be limited based on U.S. market restrictions even if United States regulations have a preclusive effect on Mexican firms desiring to enter the U.S. market. Instead, SCT hopes to be able to work with the Commission to study the factors affecting the telecommunications industry and to jointly develop policies which encourage the healthy and dynamic growth of competitive markets in both countries and for international services between them.

structure. This, in turn, could slow the global expansion of market liberalization, a result directly contrary to the FCC's stated objectives for this proceeding.

Instead, the Commission should focus on increasing the level of cooperation and joint economic policy development with Mexico and other countries considering market liberalization and deregulation. Such a basic approach would both hasten and increase the odds of the global expansion of competitive telecommunications industry structures. The Commission should build its policy framework with the objective to cooperate as openly and fully as possible with another government, particularly when the geographic, economic, and cultural ties are as close as those with Mexico. The Commission should start from the premise that the economic principles underlying its policies are sufficiently meritorious to warrant serious consideration by other countries. In fact, the United States has demonstrated positive leadership by example around the globe for a number of years, and there are increasing indications that its existing open entry model for telecommunications is being adopted in more and more countries.

Before it resorts to more restrictive entry policies, the Commission should undertake a comprehensive effort to ensure that foreign administrations understand the substantive premises of its policies, and be willing to listen to the views of other governments regarding such issues. Such a dialogue would likely produce a more uniform international regulatory environment which would benefit carriers of many countries. Only if such efforts fail to produce results that further United States interests (and SCT does not believe that they will) should the Commission consider the imposition of new market restrictions, barriers to entry, or other governmental market interventions.



Even though a country such as Mexico may have established constructive and open telecommunications market policies, and taken all practical steps to open its telecommunications markets consistent with its economic and other market realities, the NPRM's approach would in effect permit the Commission to penalize a telecommunications company from that country (state-owned or private) if these efforts were "not good enough" in the FCC's sole view. This result is directly contrary to the Commission's goal of developing competitive international markets.

First, as Mexico will soon bear witness, there is a growing trend for multiple privately-owned international carriers to be headquartered in any given country. These carriers may have little or no power to influence the telecommunications policy of the government of their primary market. Yet the Commission would propose possibly to exclude them from the United States market because of government policy in their primary market.

Second, such market restrictions would have a tendency to provide a basis for other countries to exclude United States carriers from their markets. Such retaliatory treatment could become difficult to undo, thus delaying and impeding the market-based expansion of international competition.

Finally, as discussed in Section IV below, such restrictions can also distort competition in the domestic telecommunications market of the foreign country. For these reasons the Commission should redirect its efforts to achieve its stated goals, foregoing new market entry restrictions and focusing instead on expanding existing international mechanisms to assist the development of liberalized telecommunications markets.

#### **IV. The Proposed Effective Market Access Policy Discriminates in Favor of United States Firms and Ignore the Regulatory Concerns of Other Countries**

Several U.S. firms have indicated an interest in entering the Mexican market, some by forming new companies in partnership with Mexican firms with existing local infrastructure or market understanding and presence. These include, for example, MCI-BanaMex, AT&T-Alpha, Sprint-Telmex, Bell Atlantic - IUSACELL, and Westel-Marcatel. Because these partnerships would have United States affiliates (e.g., MCI, Sprint, and AT&T) they would be able to take advantage of the U.S. market through the existing 214 authorizations that their U.S. affiliates had already obtained from the Commission, with all of the practical market implications such joint efforts make possible.<sup>18</sup>

However, under the Commission's proposal a Mexican firm without such U.S. affiliations would possibly not be afforded market entry on its own unless the FCC decided that effective market access existed in Mexico. If its application for 214 authority were opposed by competitors, the delay could significantly affect the firm's ability to compete in Mexico. The potential effect of the proposed policy, therefore, is to make the possible benefits of United States market participation more easily available to foreign firms which establish such relationships with authorized United States telecommunications service providers than to foreign firms that do not do so. Because of the large amount of traffic

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<sup>18</sup> Examples of the kind of competitive advantage these U.S. affiliates could bring to their Mexican affiliates include the ability to coordinate marketing of services in both countries, to adjust U.S. volume discount rate structures based on inclusion of Mexico traffic, and possible coordinated arrangements including switching equipment, software, enhanced services, and the like.

between Mexico and the United States, such differential conditions in the United States market could significantly distort competition in the Mexican market. This is of particular concern to SCT at the early stages of the opening of the Mexican markets to competition, when such interference with market forces could inhibit SCT's efforts to establish market conditions which present equitable opportunities for all entrants irrespective of their relationship to United States firms.

For example, several Mexican carriers could be competing for the domestic Mexican long distance traffic of a large customer. That customer could be an international corporation that also requires a substantial amount of domestic United States long distance services. If one of the Mexican carriers has a non-dominant United States carrier affiliate, its United States affiliate could offer the large customer attractive prices for its United States traffic conditioned upon use of the Mexican affiliate for Mexican domestic traffic. If other competing Mexican carriers were denied comparable access to the U.S. market, the competitive process within the Mexican market would be distorted in favor of the Mexican firm with a United States affiliate.

The Commission should, therefore, study further the potential impacts of a policy of restricting market entry, consult with potentially affected governments such as Mexico, and ensure that it does not adopt policies which inhibit, rather than encourage, the development of competitive telecommunications markets, not only in the United States but in other countries as well. As part of this analysis, the Commission should include consideration of how it can, through cooperation with the regulatory authorities of other

countries, help ensure that U.S. firms do not exploit their market positions in the United States when seeking to enter the market in Mexico and other countries.

**V. The Commission Should Not Codify Its Mandatory Proportional Return Policy**

The FCC proposes to codify its current proportional return policy, irrespective of the market structure that may exist in the affected countries. SCT expresses no view at this time concerning the ongoing wisdom of a proportional return policy, but notes that the policy appears to be a classic example of regulatory intervention in a market that may not require such artificial constraints in the future.

For example, if multiple competing international carriers operate on each side of the U.S. - Mexican border, should all carriers, particularly if no carrier can exercise market power, be required to proportionally allocate traffic in each direction to one or more of their competitors or their affiliates? Who would administer such allocations, and what is the public interest being served by such a government-mandated market allocation scheme?

SCT believes that this issue is ripe for further study, particularly with the number of multiple carrier international markets growing at a rapid rate. The current policy could be maintained for the near term, but SCT urges the Commission to explore other alternatives in the interim that may be more appropriate for fully competitive international markets.

## **VI. Conclusion**

Mexico is committed to full and open competition in its domestic and international telecommunication markets. However, this must be accomplished within the context of Mexican economic, legal, and regulatory traditions and constraints.

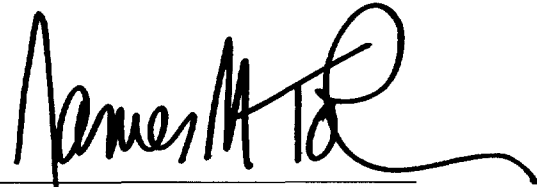
Cooperation with other international regulatory authorities should be the key underlying regulatory principles reflected in the Commission's evaluation of market entry applications by foreign-affiliated firms. Such a fundamental posture would assist United States firms seeking to enter Mexico's growing market, as well as foster competition in other foreign markets. The imposition of regulatory mandates designed to "export" the Commission's views of proper or timely regulatory openness must be carefully evaluated in light of their potential unintended impact.

Specifically, the Commission should reconsider adoption of the proposed effective market access policy, and should not codify the existing proportional return rule without additional study of its implications in a multiple carrier context.

The Commission should also emphasize and enhance its current practices of cooperation with international authorities, particularly with countries which are its economic allies and important trading partners, and particularly when -- like Mexico -- the country is making significant efforts to introduce and stabilize a competitive telecommunications market.

Respectfully submitted,

SECRETARY OF COMMUNICATIONS  
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A handwritten signature in black ink, appearing to read "James M. Tobin", written over a horizontal line.

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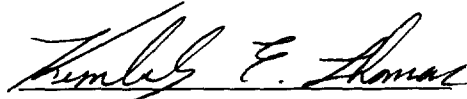
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